## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

AC SPECIALISTS, INC. :

Respondent,

. : Case No. 12-CA-

and 076395

:

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 123,

:

Charging Party.

## BRIEF IN SUPPORT OF CHARGING PARTY'S MOTION TO STRIKE

The Charging Party moves to strike the factual assertions contained in the last line of page 5 of Respondent's "Exceptions" document. This sentence reads as follows: "Notably, however, A/C Specialists has already satisfied the vast majority of these requirements, as it has: (1) offered reinstatement to Stahl; (2) provided backpay to both Noel and Gordon; (3) agreed to recognize and bargain with the Union, and (4) posted and mailed an analogous notice in connection with the ancillary Section 10(j) proceedings before the District Court."

The above quoted statement is unaccompanied by transcript references. This is unsurprising because these factual assertions are to matters wholly outside of the record with the sole exception that there was a reference to backpay paid to discriminatees Noel and Gordon at the hearing. The parties disagreed on whether full

backpay was paid and it was specifically that the sufficiency of the backpay to Noel

and Gordon would not be litigated. (See Tr. 16-17.)

The Administrative Law Judge noted in fn. 3 of the Decision that "Gordon and

Noel received backpay when they were reinstated. If the amounts they received did

not make them whole, they shall receive additional backpay. I shall leave for

compliance the determination as to whether the amounts they received make them

whole." ALJD11:46-48.

The remaining factual assertions in the last sentence of page 5 refer to matters

outside the record that are contested by the Charging Party. Accordingly, they should

be stricken from the record. See, G.M. Mech., Inc., 326 NLRB 35 (1998).

**CONCLUSION** 

For the reasons stated in this brief the Motion to Strike should be granted and

the last sentence of page 5 of the document entitled "Respondent's Exceptions" should

be stricken from the record.

By:

Respectfully submitted,

/s/Brian A. Powers (Bar No. 278127)

bpowers@odonoghuelaw.com

O'DONOGHUE & O'DONOGHUE LLP

4748 Wisconsin Avenue, NW Washington, D.C. 20016

Phone: (202) 362-0041

Fax: (202) 237-1200

Counsel for the United Association Local 123

226546 1

Date: November 26, 2012

2

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26<sup>th</sup> day of November 2012, the following document:

Brief in Support of Charging Party's Motion to Strike
was filed using the Court's ECF filing system and that a notice of such filing was sent
electronically to the following:

Margaret J. Diaz Regional Director NLRB, Region 12 201 East Kennedy Blvd. Suite 530 Tampa, FL 33602-5824 Margaret.diaz@nlrb.gov

Thomas Gonzalez, Esq.
Thompson, Sizemore, Gonzalez & Hearing
One Tampa City Center
201 N. Franklin Street, Suite 1600
Tampa, FL 33601
tgonzalez@tsghlaw.com

/s/Brian A. Powers